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2 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084
3 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v.
4 Dep't of Social and Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf,
5 PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053
6 (1994).

8 II. FINDINGS OF FACT

9 2.1 Appellant Michael Alice is a Community Corrections Officer (CCO) 2 and a permanent
10 employee of Respondent Department of Corrections (DOC). Appellant and Respondent are subject
11 to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC.
12 Appellant filed a timely appeal with the Personnel Appeals Board on November 28, 2000.

13
14 2.2 Appellant had been employed by DOC since 1982. He received a demotion in 1997 for
15 engaging in behavior of a harassing and sexual nature at the workplace. Prior to January 1, 1999,
16 Appellant's work performance was rated "Meets Normal Requirements" or above. Appellant is a
17 seasoned CCO and is aware of agency policies and expectations regarding offender supervision.

18
19 2.3 At the time of incidents giving rise to this appeal, Appellant worked in the Spokane Valley
20 office. Two years prior to Appellant going to work in the Spokane Valley office, there was internal
21 strife among the staff of the office. However, Respondent employed the assistance of a facilitator
22 who successfully assisted staff with resolving the problems.

23
24 2.4 By letter dated October 27, 2000, Respondent notified Appellant of his two-step reduction in
25 salary, effective November 1, 2000 through February 15, 2001. Respondent charged Appellant
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1 with neglect of duty, insubordination, gross misconduct and willful violation of published
2 employing agency or department of personnel rules or regulations. In summary, Respondent
3 alleged that Appellant inappropriately supervised offenders by misclassifying offenders, failing to
4 make required contacts with offenders, and issuing illegal orders for bench warrants. In addition,
5 Respondent alleged that Appellant failed to complete an itinerary before going into the field and
6 failed to follow through on his supervisor's instructions and directions.

7
8 2.5 The Level of Service Inventory (LSI) is an offender classification system used by CCOs to
9 establish an offender's risk of re-offending. The LSI assesses numerous key areas of offender
10 information including, in part, recidivism record, anti-social/pro-social behavior, criminal history,
11 leisure time, attitude, emotional/personal issues, and drug and alcohol use. CCOs gather the
12 information used for the LSI from the offender's file, from face-to-face interviews with the offender,
13 and from collateral contacts. If the LSI score is inaccurate, a high-risk offender could be classified
14 as low risk and not receive the appropriate DOC supervision, or a low risk offender could be given
15 more supervision than necessary thereby wasting agency time, funds and effort.

16
17 2.6 CCO 3 Richard Lasater was Appellant's co-worker in the Spokane Valley office. Mr.
18 Lasater was a member of the training team for the implementation of the LSI system. He
19 participated in providing the training that Appellant attended. After the training program, Appellant
20 had difficulty utilizing the system to accurately score offenders; therefore, at his supervisor's
21 request, Mr. Lasater provided Appellant one-on-one assistance in reviewing his cases. Mr. Lasater
22 ascertained that Appellant's primary problem was not getting enough information from the
23 offenders during their initial interviews and not applying it correctly to the LSI.

24
25 2.7 CCO Supervisor Nanette DeGeorgio was Appellant's supervisor. In reviewing the monthly
26 audit reports of Appellant's caseload, Ms. DeGeorgio found a pattern of procedural errors, overdue

1 work, and poor judgment. Ms. DeGeorgio met with Appellant on November 8, 1999 to discuss her
2 concerns about his case work, and as a result, she stopped assigning him new cases and directed
3 him to begin a full audit of his existing caseload, to correct classification errors, and to catch up on
4 overdue work. Ms. DeGeorgio also directed Appellant to meet with her weekly to review cases and
5 establish goals for his performance. In addition, she instructed him to post his field itineraries and
6 provide her with a separate copy of each itinerary.

7
8 2.8 On February 29, 2000, Ms. DeGeorgio completed an annual performance evaluation for
9 Appellant covering January 1, 1999 to January 1, 2000. Ms. DeGeorgio noted that Appellant had
10 not complied with her November 8, 1999, directives, had not completed the audit of his caseload,
11 had not met with her weekly, and did not post or provide her with a copy of his field itineraries.
12 Ms. DeGeorgio also noted that Appellant was behind in his casework reports, had not entered
13 chronological entries in the Offender Based Tracking System (OBTS), failed to follow through on
14 offender supervision, continued to make significant errors in LSI assessments, inappropriately used
15 the override process to change offender classifications, submitted reports without supporting
16 documentation, and made recommendations that exceeded DOC's authority.

17
18 2.9 Ms. DeGeorgio informed Appellant that she would continue to exempt him from new case
19 assignments until he was able to improve his performance. Ms. DeGeorgio also informed Appellant
20 that she would complete a "Special Evaluation" in May 2000 and provided him with four specific
21 performance expectations. Specifically, Ms. DeGeorgio instructed Appellant to:

- 22 • Staff his fieldwork plan with her each month, to post a copy of his field itinerary
23 and to provide her with a copy of his field itinerary prior to initiating any field
24 work;
- 25 • Spend at least two hours each month working with co-workers in the field or
26 office;
- Continue the cleanup work associated with his case audits; and

- Use the correct codes, document all relevant information and actions taken, and document case staffings on chronologies.

2.10 Appellant disputed the performance evaluation and asked Ms. DeGeorgio to review and rewrite the evaluation. Appellant said that he submitted forms on each of his cases, that he left field itineraries at the front counter but that he was not aware that Ms. DeGeorgio wanted a separate copy, that he believed he was using the LSI assessment tool accurately, and that he completed more violation reports than the unit average.

2.11 On May 25, 2000, Appellant and Ms. DeGeorgio met for a special evaluation conference. Ms. DeGeorgio expressed her continuing concerns about Appellant's performance and overdue work. She asked Appellant to provide her with a written plan and timeline for monitoring his progress by May 31, 2000. Appellant failed to provide the plan and timeline to Ms. DeGeorgio.

2.12 On July 19, 2000, Ms. DeGeorgio completed a special evaluation covering Appellant's performance from January 2, 2000 to May 31, 2000. Prior to completing the evaluation, Ms. DeGeorgio audited each of Appellant's cases to identify how much work had been completed and how much remained to be done, and to identify errors. Ms. DeGeorgio found that Appellant's workload had not decreased, in part, because he had not closed 42 cases that were past their maximum expiration of supervision. Ms. DeGeorgio also found that Appellant's overdue work had increased in spite of her directive to him to focus on catching up on his overdue assignments. Ms. DeGeorgio noted that Appellant's pattern of making procedural errors and poor judgments continued.

2.13 By memorandum dated August 1, 2000, Appellant responded to his second-line supervisor, Jack Kopp, regarding the special performance evaluation and the results of Ms. DeGeorgio's audit.

1 In the special evaluation, Ms. DeGeorgio addressed 125 of Appellant's cases and noted the errors
2 she found in each case. Appellant responded specifically to 67 of the cases identified by Ms.
3 DeGeorgio. After careful review of the documentary evidence, the Board finds that many of
4 Appellant's responses were corrections to dates in Ms. DeGeorgio's audit notes and did not address
5 the errors she identified. Furthermore, Ms. DeGeorgio's audit notes reflected the status of
6 Appellant's cases as of May 31, 2000. Appellant's responses to 31 of the cases reflected actions
7 taken after May 31, 2000. Appellant did not dispute the errors Ms. DeGeorgio identified in the
8 remaining 58 cases.

9
10 2.14 During the time period covered by the special evaluation, Appellant was recovering from his
11 fourth back surgery and he used over 100 hours of sick leave. Appellant credibly testified that
12 during this time period, he suffered from a considerable amount of back pain. However, Appellant
13 did not seek accommodation or modification to his work assignments. Furthermore, on December
14 1, 1999, Appellant's physician indicated that Appellant was "physically fit to perform his job as a
15 Probation Officer and is able to arrest people if necessary."

16
17 2.15 Kaye Adkins, Regional Administrator, is Appellant's appointing authority. Ms. Adkins
18 reviewed the information provided by Ms. DeGeorgio and Appellant's responses. She determined
19 that misconduct had occurred and concluded that because Appellant's past performance was
20 satisfactory, he was competent to perform the duties of his position. Therefore, she concluded that
21 his recent performance problems were willful, neglectful and insubordinate. Ms. Adkins met with
22 Appellant on August 16, 2000 and considered his responses to the charges, including his use of sick
23 leave. Ms. Adkins concluded that Appellant's use of sick leave amounted to two days per month
24 during the special evaluation period and should not have had a negative impact on his ability to do
25 his job.

1
2 2.16 Ms. Adkins determined that Appellant's actions were willful, that he failed to perform his
3 CCO2 duties and responsibilities, that his actions and inactions violated agency policies and
4 procedures, and that he failed to comply with his supervisor's directives. Ms. Adkins concluded
5 that Appellant failed to accurately access and classify offenders and complete reports, and that his
6 lack of action placed the public and agency at risk and created the undue burden of increased
7 workloads for his co-workers.

8
9 2.17 Ms. Adkins considered terminating Appellant, but after considering his long-term
10 employment record and his use of sick leave, she determined that a three-month reduction in salary
11 was sufficient to show Appellant the seriousness of his misconduct and to motivate him to improve
12 his performance. In addition, Ms. Adkins reassigned Appellant to another supervisor.

13
14 2.18 DOC Office of Correctional Operations Field Directive DCC 200.405, states, in part:
15 CCOs are to maintain files per the file maintenance checklist. . . CCOs will enter all
16 contacts and information gathered during case supervision on the OBTS DT37
17 Chronological Record Screen.

18 2.19 DOC Office of Correctional Operations Field Directive DCC 200.410, states, in part:
19 Prior to submitting any formal report to the Court/Board/Compact Administrator,
20 staff are to review the report for: appropriate format; correct grammar and
21 punctuation; completeness; accuracy; and neatness.
22 A. CCOs and supervisors are to ensure that reports contain an appropriate
23 recommendation for action by the Court/Board/Compact Administrator.

24 2.20 DOC Office of Correctional Operations Field Directive DCC 200.440, states, in part:
25
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CCOs will complete an itinerary and leave a copy with the supervisor/designee or per local practice.

2.21 DOC Office of Correctional Operations Field Directive DCC 200.700, states, in part:

CCOs are legally responsible for reporting violations to the court. CCOs are to take action when they learn an offender has violated conditions of supervision. All violations of supervision are to be reported prior to the termination date of supervision.

B. Action must be taken within the following time frames, which begin when the violation becomes known to the officer. . . . within 30 calendar days for non CCI cases.

C. CCOs are to consult with their supervisor when selecting sanction options from outside the Sanction Grid.

2.22 DOC Office of Correctional Operations Field Directive DCC 200.710, states, in part:

CCOs are to consult with supervisors to assess alleged violations and/or arrests by law enforcement to determine whether or not the offender should be arrested/detained.

2.23 DOC Policy Directive 320.400, states, in part:

II.A. Offenders on face-to-face supervision in the community will be classified based upon potential risk to community safety.

1. Case managers will supervise offenders at the classification level determined by the Department based on the LSI-R score, unless an override is utilized.

. . . .

8. Offenders with a history of violent/sex offending behavior will not be transferred to OMA.

IV.C. Reassessments-Field

1. At least every 6 months for offenders on face-to-face supervision.

. . . .

1 VI.C. The Case Manager will document the risk assessment information gained
2 from the LSI-R assessment/reassessment of OBTS DT35 using the Risk Assessment
(RA) code.

- 3 1. RA chrono entries will include:
- 4 a. The LSI-R score;
 - 5 b. The potential risk level identified;
 - 6 c. The average percentage of risk to re-offend;
 - 7 d. The field classification for field cases only;
 - 8 e. OMMU eligibility;
 - 9 f. A brief explanation of each risk/need factor identified;
 - g. Interview impressions;
 - h. Sources used to obtain/verify information if the offender refused to
participate in the initial assessment; and
 - i. Any other information that may be pertinent to the supervision effort.
- 10 2. Reassessment chrono entries will include significant changes in risk/needs areas
and/or areas identified that need intervention.

11
12 2.24 DOC Policy Directive 420.380, states, in part:

13 II.B. Testing of Offenders being Supervised in the Community

- 14 1. If there is a drug/alcohol prohibition, offenders being supervised face to face in
15 the community will be tested at least once a month.

16 V.B. If the offender is not confined all positive urinalysis will result in the
17 imposition of appropriate sanctions per DCC 200.700 All Violation Processes.

18
19 **III. ARGUMENTS OF THE PARTIES**

20 3.1 Respondent argues that Appellant's performance problems consisted of failure to properly
21 classify offenders, which created a risk and safety problem for the community; failure to make
22 required contacts with offenders, which created a liability for the agency and risk for the
23 community; and offering illegal orders to the court, which created credibility problems for the
24 agency with prosecutors and the court. Respondent contends that in spite of the efforts of his
25 supervisor, Appellant's performance problems continued and he failed to bring his caseload into
26 order by the end of the special evaluation period. Respondent asserts that Appellant was not doing

1 his job, that he failed to get enough information from offenders, and that his work product
2 demonstrated his inattention to his work responsibilities. Respondent further asserts that
3 Appellant's medical condition did not interfere with his ability to perform the essential functions of
4 his position. Respondent contends that Appellant was willfully neglectful of his caseload and failed
5 to properly supervise offenders. Respondent further contends in spite of Appellant's egregious
6 performance deficiencies, Ms. Adkins gave him the benefit of the doubt and imposed a minor
7 disciplinary penalty. Respondent asserts that the disciplinary sanction was appropriate and the
8 appeal should be denied.

9
10 3.2 Appellant argues that his appeal is the result of unfortunate circumstances and events.
11 Appellant asserts that the Spokane Valley office was not a good atmosphere in which to work, that
12 Ms. DeGeorgio did not provide him with the assistance he requested, and that she did not review or
13 complete the reports and information he forwarded to her for signature. Appellant further asserts
14 that he was very sick and in pain during this time which, when coupled with the attacks on his
15 performance by Ms. DeGeorgio, impacted his ability to complete his casework. Appellant argues
16 that in light of his history with the department and his medical issues, the disciplinary sanction was
17 not justified and should be overturned.

18 19 **IV. CONCLUSIONS OF LAW**

20 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
21 herein.

22
23 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
24 the charges upon which the action was initiated by proving by a preponderance of the credible
25 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
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1 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
2 Corrections, PAB No. D82-084 (1983).

3
4 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
5 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
6 of Social & Health Services, PAB No. D86-119 (1987).

7
8 4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior
9 and is defined as not submitting to authority, willful disrespect or disobedience. Countryman v.
10 Dep't of Social and Health Services, PAB No. D94-025 (1995).

11
12 4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
13 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

14
15 4.6 Willful violation of published employing agency or institution or Personnel Resources
16 Board rules or regulations is established by facts showing the existence and publication of the rules
17 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
18 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &
19 Health Services, PAB No. D93-053 (1994).

20
21 4.7 Respondent has met its burden of proof. Appellant neglected his duty, was insubordinate
22 and willfully violated published agency policies when he failed to comply with the directives of his
23 supervisor, failed to correctly assess offenders, failed to properly utilize the LSI system, failed to
24 enter offender information into the OBTS system, failed to maintain and complete his case work in
25 a timely manner, and failed to carry out his offender supervision duties and issue appropriate

1 recommendations to the court as directed by agency policies. Appellant's behavior adversely
2 affected the credibility of the agency, placed the public at risk, created a liability for the agency, and
3 rose to the level of gross misconduct.

4
5 4.8 Considering the fact that Appellant's physician released him to return to work without any
6 restrictions, we conclude that Appellant was physically capable of performing the duties of his
7 position. In addition, Appellant's history of good performance as a CCO shows that he had the
8 knowledge and skills necessary to fulfill the duties and responsibilities of his position. Therefore,
9 under the totality of the proven facts and circumstances, we conclude that a three-month reduction
10 in salary is a minimal disciplinary sanction particularly in light of Appellant's willful disregard for
11 the directives of his supervisor and the safety of the community. The appeal should be denied.

12
13 **V. ORDER**

14 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Michael Alice is denied.

15 DATED this _____ day of _____, 2002.

16 WASHINGTON STATE PERSONNEL APPEALS BOARD

17
18 _____
19 Gerald L. Morgen, Vice Chair

20
21 _____
22 René Ewing, Member

23
24
25
26
Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504